

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DORENE CAMPOS,
Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.

NO. CV 07-2150 AGR

MEMORANDUM OPINION AND
ORDER

Dorene Campos filed this action on April 4, 2007. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before Magistrate Judge Rosenberg on April 16 and 20, 2007. On January 28, 2008, the parties filed an amended Joint Stipulation ("JS") that addressed the disputed issues. The Court has taken the matter under submission without oral argument.

Having reviewed the entire file, the Court remands this matter to the Commissioner for proceedings consistent with this Opinion.

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I.

PROCEDURAL BACKGROUND

On April 11, 2003, Campos filed an application for supplemental security income benefits, which the Commissioner initially denied. A.R. 73-76, 38-41. On December 8, 2004, an Administrative Law Judge conducted a hearing. A.R. 329-348. On May 23, 2005, the judge issued a decision denying benefits. A.R. 32-37. On March 3, 2006, the Appeals Council vacated the judge's decision and remanded the matter for further review. A.R. 69-72.

A second Administrative Law Judge (the "ALJ") conducted a hearing on September 21, 2006, at which Campos and a vocational expert testified. A.R. 349-369. On October 3, 2006, the ALJ issued a decision denying benefits. A.R. 17-22. On February 23, 2007, the Appeals Council denied Campos' request for review. A.R. 5-7.

This lawsuit followed.

II.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

"Substantial evidence" means "more than a mere scintilla but less than a preponderance – it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion." *Moncada*, 60 F.3d at 523. In determining whether substantial evidence exists to support the Commissioner's decision, the Court examines the administrative record as a whole, considering adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the

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evidence is susceptible to more than one rational interpretation, the Court must defer to the Commissioner's decision. *Moncada*, 60 F.3d at 523.

III.

DISCUSSION

A. Pertinent Legal Standards

1. Definition of Disability

"A person qualifies as disabled, and thereby eligible for such benefits, only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." *Barnhart v. Thomas*, 540 U.S. 20, 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003) (citation and internal quotation marks omitted).

B. The ALJ's Findings

The ALJ found that Campos had a history of hepatitis C, chronic pain, obesity, and depression. A.R. 21. Campos had the residual functional capacity to "perform medium exertion with occasional climbing, balancing, stooping, kneeling, crouching and crawling. She also has mild to moderate restriction of activities of daily living, mild to moderate difficulties in maintaining social functioning, mild to moderate difficulties in maintaining concentration, persistence or [sic] pace with no episodes of decompensation, each of extended duration. Accordingly, she does not have a severe mental impairment." *Id.* Based on her residual functional capacity, the ALJ found that Campos could not perform her past relevant work. *Id.* However, she could perform other jobs. *Id.*

C. Examining Opinions of Drs. Hudson and Townsend

1. Hudson

At the request of the California Department of Social Services, psychiatrist Bernard Hudson performed a psychiatric evaluation of Campos on June 14,

1 2003. A.R. 166-170. Dr. Hudson reviewed no medical records. A.R. 166.

2 According to Campos, she was diagnosed with hepatitis C in 2000 and became
3 depressed not too long after that. *Id.* She also gained weight, from 264 pounds
4 to about 312 pounds. A.R. 167.

5 She had never been treated before by a psychiatrist. *Id.* She was taking
6 “psychiatric medicine” (Effexor) for several months, prescribed by her general
7 practitioner, and reported that it had “helped partially.” *Id.* She was also taking
8 other medications, including Valium (a tranquilizer), Tylenol #3 (an analgesic),
9 Dalmane (a sedative), Soma (a muscle relaxant), Tagamet (an antacid), and
10 Albuterol inhaler (for asthma). *Id.*

11 Dr. Hudson diagnosed Campos with dysthymia and insomnia. A.R. 169.
12 He noted that she was morbidly obese. *Id.* He stated that her functional capacity
13 was “moderately limited in terms of her ability to withstand the stress and
14 pressures associated with an 8-hour workday as related to her own [sic] going
15 depression.” *Id.*

16 The ALJ did not refer to Dr. Hudson’s report at all.

17 **2. Townsend**

18 At the request of the California Department of Social Services, psychologist
19 Jeannette Townsend performed a psychological evaluation of Campos on May
20 26, 2006. A.R. 304-309. The only medical records Dr. Townsend reviewed were
21 those of Dr. Hudson. A.R. 309. Similar to the report Campos gave Dr. Hudson,
22 Campos reported to Dr. Townsend that she became “depressed in 2001 when
23 she developed the medical problems.” A.R. 304. At the time she saw Dr.
24 Townsend, Campos was taking Effexor, Vicodin (for pain), Valium, Soma, and
25 high blood pressure medicine. A.R. 305.

26 Dr. Townsend gave Campos a battery of mental tests. A.R. 307. Campos’
27 “Full Scale IQ” was 76, or “in the borderline range.” *Id.* Campos’ “immediate

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1 memory is low average for auditory material and moderately impaired for visual
2 material. Delayed memory is in the moderately retarded range.” *Id.*

3 Dr. Townsend diagnosed Campos with “depressive disorder with anxiety”
4 and gave her a GAF score of 50. A.R. 308. Dr. Townsend completed a Social
5 Security Administration form entitled “Medical Source Statement of Ability to Do
6 Work-Related Activities (Mental).” A.R. 310-312. She rated Campos’ limitations
7 as “none” or “slight” except for “respond appropriately to work pressures in a
8 usual work setting,” which she rated as “moderate.” A.R. 310-311.

9 The ALJ found that Dr. Townsend’s conclusions were “not rebutted by any
10 treating source.” A.R. 19. Although the ALJ listed most of Dr. Townsend’s
11 findings, he did not state that Dr. Townsend had concluded that Campos was
12 moderately limited in her ability to respond to work pressures. *Id.*

13 3. Analysis

14 Campos argues that the ALJ erred when he failed to address Dr. Hudson’s
15 findings. JS 7. Campos also argues that both doctors came to the same
16 conclusion about Campos’ inability to respond to work pressures and, yet, the
17 ALJ failed to include that inability in his hypothetical to the vocational examiner
18 (“VE”). JS 7, 8.

19 The ALJ’s description of Campos’ mental limitations to the VE was as
20 follows:

21 It would be mild to moderately limited for understanding and
22 remembering tasks [inaudible] sustained concentration and
23 persistence, for socially interacting with the general public and for
24 adapting to workplace changes and using a regressive mental
25 limitations scale of light to mild to moderate to marked, would there
26 by any jobs she could perform and if so what would the numbers of
27 those jobs be?

28 A.R. 365-366. After the VE opined that there were many jobs in the economy

1 Campos could perform, the ALJ asked if she could “do those jobs if you’re
2 markedly limited in those mental functions I’ve described,” and the VE said no.

3 A.R. 367. Campos’ counsel added the following to the ALJ’s hypothetical:

4 [B]ecause of psychiatric and psychological factors an individual
5 would be limited from withstanding the stressors and pressures
6 associated with an eight hour workday. Would that individual be able
7 to maintain the, either the past relevant work or any other work
8 you’ve identified?

9 A.R. 368. The VE said if that meant the “normal everyday stress of work,”
10 Campos would not. *Id.*

11 First, the ALJ erred in ignoring Dr. Hudson’s report.¹ See *Lester v. Chater*,
12 81 F.3d 821, 830-31 (9th Cir. 1995) (“the Commissioner must provide ‘clear and
13 convincing’ reasons for rejecting the uncontradicted opinion of an examining
14 physician [and] even if contradicted by another doctor, can only be rejected for
15 specific and legitimate reasons that are supported by substantial evidence in the
16 record”) (citations omitted). Second, for the same reason, the ALJ erred in
17 ignoring the unrebutted finding of Dr. Townsend that Campos was moderately
18 limited in her ability to respond appropriately to work pressures in a usual work
19 setting and in failing to include the limitation when questioning the VE. See
20 *DeLorme v. Sullivan*, 924 F.2d 841, 850 (9th Cir. 1991) (“the failure to include the
21 mental impairment [in the hypothetical] would of itself require remand for
22 reconsideration”) (citation omitted); see also *Matthews v. Shalala*, 10 F.3d 678,
23 681 (9th Cir. 1993) (“If a vocational expert’s hypothetical does not reflect all the

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25 ¹ The Commissioner’s implicit argument that because the first decision
26 reviewed Dr. Hudson’s report and because the Appeals Council did not
27 specifically require a revisiting of this issue on remand, the findings of the first
28 ALJ satisfy the second ALJ’s legal requirements is without merit. JS 11. The
Appeals Council *vacated* the first ALJ’s decision. It is therefore “void.” See
Massachi v. Astrue, 486 F.3d 1149, 1154, 1154 n. 21 (9th Cir. 2007) (after the
Appeals council vacates the original decision, “on remand, the ALJ’s original
finding no longer existed”).

1 claimant's limitations, then the expert's testimony has no evidentiary value to
2 support a finding that the claimant can perform jobs in the national economy.")
3 (citation and internal quotation marks omitted).²

4 **IV.**

5 **ORDER**

6 IT IS HEREBY ORDERED that the matter is remanded at Step Five so the
7 ALJ may add the limitation that Campos was moderately limited in her ability to
8 respond appropriately to work pressures in a usual work setting in his
9 hypothetical to the VE.

10 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
11 Order and the Judgment herein on all parties or their counsel.

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13 DATED: April 15, 2008

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ALICIA G. ROSENBERG
United States Magistrate Judge

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27 ² The Court agrees with the Commissioner that the VE's testimony based
28 on the hypothetical was ambiguous. JS 12. Campos' counsel did not express
the mental limitation at issue as moderate. A.R. 368. Therefore, the VE's
response was unclear. *Id.*